

FINANCIAL REGULATORY QUICK START GUIDE

UK MARKET ABUSE REGULATION: OVERVIEW

OVERVIEW

The UK “onshored” the EU Market Abuse Regulation (MAR) at the end of the Brexit transitional period on 31 December 2020. EU MAR came into effect on 3 July 2016 and replaced the previous Market Abuse Directive, widening the regime to apply to more venues, instruments, and behaviours. MAR includes measures to prevent market abuse, to ensure the integrity of financial markets, and to enhance investor protection and confidence within those markets.

INTERACTION WITH EU MAR

MAR was onshored in the UK with only minor changes, to make the regime operable from a UK-only perspective. The framework and core offences otherwise remain the same.

One key difference is that the UK decided to onshore MAR with its original scope for the core offences (i.e., UK and EU financial instruments), whereas, post-Brexit, EU MAR only applies in relation to EU financial instruments. This means that the FCA can police market abuse beyond the UK, and both the FCA and the relevant European regulator could take action in respect of the same behaviour concerning EU instruments.

Definition of Inside Information

Under MAR, inside information means information:

- of a precise nature
- which has not been made public
- relating, directly or indirectly, to one or more issuers or to one or more financial instruments
- which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments

However, under UK MAR the obligations for listed issuers are limited to UK listed issuers, to avoid double reporting requirements (although dual-listed issuers will have to report twice).

Going forward, the UK government plans to repeal MAR and replace it with UK specific legislation and regulatory rules, which could potentially lead to substantive divergence between the EU and UK market abuse regimes. The government plans to make revisions to the UK criminal market abuse regime at the same time.

CORE MARKET ABUSE OFFENCES

- **Insider Dealing** – using inside information to deal (or attempt to deal), to amend or cancel an existing order, or to recommend or induce another to deal on the basis of that information.

- **Unlawful disclosure of inside information** – disclosure of inside information other than in the normal exercise of a person’s employment, profession, or duties.

- **Market manipulation** – manipulation of the market, including attempted manipulation, and manipulation of benchmarks and (in certain circumstances) spot commodity contracts.

GEOGRAPHICAL SCOPE

The geographical scope of MAR is global: it applies to actions and omissions in respect of in-scope financial instruments, wherever those actions and omissions take place, whether in the UK or another country.

The focus of MAR is on whether the instrument is in scope, not on where the person acting in respect of such instrument is based. While MAR clearly applies globally in respect of the core offences, in practice, the FCA may be unlikely to utilise its enforcement resources in relation to breaches of the “conduct” elements of MAR by persons outside the UK and EU. This is even less likely where the instrument is only in scope through a so-called involuntary listing (where a venue has admitted a security to trading without the issuer’s knowledge or consent).

Application

UK MAR applies to:

1. Financial instruments admitted to trading on a **UK or EU** regulated market, or for which a request for admission to trading on a **UK or EU** regulated market has been made;
2. Financial instruments traded on a **UK or EU** multilateral trading facility (MTF) or organised trading facility (OTF); and
3. Financial instruments not covered by 1. and 2. above, the price or value of which depends on, or has an effect on, the price or value of a financial instrument referred to in those points. This will include, but is not limited to, credit default swaps and contracts for difference.

Application to voluntary v involuntary listings

Area of MAR	Voluntary Listing	Involuntary Listing
Core offences	x	x
Issuer disclosures	x	
Market soundings	x	x
Insider lists	x	
PDMR transactions	x	

- **Investment Recommendations** – where a communication meets the MAR definition of an investment recommendation (broadly, a communication suggesting or recommending a particular investment strategy), MAR requires that the information is objectively presented, and that

extensive disclosures in relation to conflicts are contained in the communication.

- **Transactions by persons discharging managerial responsibility (PDMRs) within issuers, and persons closely associated with them (as defined in MAR)** – MAR requires that transactions (the definition of “transactions” for these purposes is very broad) undertaken in the issuer’s shares, debt instruments, derivatives or other linked financial instruments are disclosed by such persons to: (a) the issuer itself; and (b) the FCA, once a certain threshold has been reached.

UK MAR – Key Sources

- The UK onshored version of the Market Abuse Regulation
- The UK onshored versions of MAR Technical Standards
- ESMA Guidelines and Questions & Answers on MAR (in existence before 31 December 2020)
- MAR Sourcebook in the FCA Handbook
- Guidance and regulatory expectations in the FCA’s Market Watch Newsletter

SAFE HARBOURS

MAR contains a number of safe harbours which, provided that specified conditions are met, allow for certain acts to be exempt from the prohibitions against market abuse. These include safe harbours in respect of:

- **Buy-back programmes and stabilisation measures** – trading in securities or associated instruments for the stabilisation of securities, or trading in own shares under a buy-back programme, are exempt from the prohibitions against market abuse where the conditions set out under MAR are met.
- **Market soundings** – the market soundings regime allows for the lawful disclosure of inside information in order to gauge interest in a transaction, but a prescribed script must be followed and the required records kept.

SANCTIONS

The FCA can take enforcement action against anyone who has committed market abuse, whether a legal person or individual. For breaches of MAR, the FCA can (amongst other things) impose unlimited fines, order injunctions, prohibit regulated firms from carrying on regulated activities, publicly censure firms or individuals, or ban individuals.

There are also severe sanctions for breaches of the UK criminal market abuse regime. For example, in respect of insider dealing and market manipulation in the UK, custodial sentences, and unlimited fines, may be imposed.

DISCLOSURES UNDER MAR

MAR sets out a number of disclosures which must be made (to the FCA, the market, or the relevant listed issuer, as required). For example:

- **Disclosure of inside information** – issuers must publicly disclose inside information that directly or indirectly concerns them as soon as possible.
- **Delay of disclosure of inside information** – issuers must notify the FCA if they have delayed disclosure of inside information (after disclosure has been made).
- **Insider lists** – MAR requires that issuers (and all those acting for them, or on their behalf) maintain an insider list, setting out everyone who has access to inside information at any given time. This list must be provided to the FCA on request.
- **Suspicious transaction and order reports** – certain market participants are required to monitor, detect, and report suspicious transactions and orders to the FCA.

CONTACTS



Nicola Higgs

Partner, London
T +44.20.7710.1154
E nicola.higgs@lw.com



Rob Moulton

Partner, London
T +44.20.7710.4523
E rob.moulton@lw.com



Jonathan Ritson-Candler

Associate, London
T +44.20.7710.1815
E jonathan.ritson-candler@lw.com